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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 13 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)

Martin W. Hoffman,)

Trustee-in-Bankruptcy for)

for Astroline Communications)

Company Limited Partnership)

For Renewal of License of Station WHCT-TV,)
Hartford, Connecticut)

and)

Astroline Communications)

Company Limited Partnership,)

Proposed Assignor)

and)

Two If By Sea Broadcasting)
Corporation,)

Proposed Assignee)

For Consent to the Assignment of License of)
Station WHCT-TV, Hartford, Connecticut)

TO: The Commission

File No. BRCT-881201LG

File No. BALCT-930922KE

**FURTHER PETITION TO DISMISS ASSIGNMENT APPLICATION
AND TO GRANT COMPETING APPLICATION**

1. Shurberg Broadcasting of Hartford ("SBH") hereby petitions the Commission to dismiss the above-captioned application for consent to the assignment of the license of Station WHCT-TV, Hartford, Connecticut, because, as set forth below, the parties thereto have failed to prosecute that application diligently, thereby adding to the clearly unreasonable delay which has already plagued this proceeding for years. Moreover, for reasons which SBH has previously presented to the Commission, the denial or dismissal of both of the

above-captioned applications would be clearly consistent with governing statutory, judicial and administrative authorities; such an action would also eliminate the need for further adjudicatory proceedings relating to these applications. Accordingly, in the event that the assignment application is dismissed in response hereto, SBH again urges that SBH's application be granted so that the public in Hartford might finally regain service on Channel 18.

2. A brief review of the recent history of this case may be helpful. In April, 1991, the license of Station WHCT-TV was assigned to Martin W. Hoffman ("the Trustee") as trustee in bankruptcy for the former licensee, Astroline Communications Company Limited Partnership ("Astroline"). The Trustee took the station off the air in April, 1991. In March, 1992 -- almost two years ago -- SBH notified the Commission, by letter, that the Trustee had apparently transferred to various creditors all of Astroline's tangible assets. Accordingly, SBH argued, the Trustee retained nothing more than a "bare license", sale of which is prohibited by the Communications Act. The Trustee declined to defend his untenable situation before the Commission.^{1/} That was almost two years ago.

3. In December, 1992, SBH submitted a "Petition to Dismiss Application" directed to the above-captioned renewal application. In that Petition SBH again argued that the Trustee had nothing but a bare license. SBH supported that factual allegation with documentation taken from the bankruptcy proceeding. In response, the Trustee largely conceded the accuracy of SBH's factual allegation. That was more than a year ago.

4. In March, 1993, the Chief, Television Branch, indicated in a letter to the Trustee

^{1/} Rather than dispute the underlying factual allegations or legal arguments before the Commission, the Trustee sought, unsuccessfully, to have SBH and its counsel held in contempt of the Bankruptcy Court.

that the "bare license" argument would be considered in connection with any assignment application which might be filed.

5. In April, 1993, after the Trustee sought another in a long series of extensions of authority to keep the station off the air, SBH opposed that extension request, *again* relying on the "bare license" argument. With regard to the March, 1993 letter from the Chief, Television Branch, SBH noted that no basis existed for deferring consideration of that argument.

6. In March-April, 1993, the Trustee indicated that he had a potential assignee of the station's license, a corporation named Two If By Sea Broadcasting Corporation ("TIBS"). The Trustee obtained preliminary approval, from the Bankruptcy Court, of a sale of the license to TIBS on June 8, 1993.

7. Three and one-half months later, on September 22, 1993, the above-captioned assignment application was filed. On November 3, 1993 SBH filed a timely petition for the denial or dismissal of that application on the basis of, *inter alia*, the "bare license" argument. SBH's November, 1993 petition represents at least the fourth time that SBH has presented this argument to the Commission -- and the Trustee -- in the last two years. Despite this, SBH's November, 1993 petition cannot be deemed unduly repetitious, since it had been effectively invited by the Chief, Television Branch, in his March, 1993 letter to the Trustee, in which the Chief, Television Branch indicated that the "bare license" argument "should be raised and considered in connection with an actual sale application".^{2/} SBH responded to

^{2/} SBH continues to object to the supposed appropriateness of delaying consideration of this argument. See, e.g., SBH's letter, dated April 27, 1993, to Donna R. Searcy concerning the above-captioned renewal application. However, now that an "actual sale application" has been filed, there can be no excuse for any further delay.

that invitation with its timely petition to deny.

8. Now, more than two months after the filing of SBH's November, 1993 petition, the Trustee has *NOT* responded to that petition *IN ANY WAY*, nor has the Trustee requested any extension of the time within which to respond.^{3/} For its part, TIBS sought, first, a 30-day extension, and then another 21-day extension, and then, at the end of that latter extension period, TIBS' counsel withdrew. TIBS has since sought a further extension of time (the request for which was not received by SBH until today, January 13, 1994). While that last request indicates that TIBS planned to file something by January 11, 1994, SBH has not as of January 13, 1994, received any filing (other than the "Further Request") from TIBS. Moreover, review (also on January 13, 1994) of the Commission's BAPS listings and its public reference room files relative to Station WHCT-TV failed to disclose any further submissions by or on behalf of TIBS.

9. The Commission is thus left with an argument which was first raised almost two years ago, which has been presented at least three additional times since its first presentation, and which has most recently been presented at precisely the time that the Chief, Television Branch indicated would be appropriate (even though, as SBH has argued, much earlier consideration of the argument was plainly warranted). The Trustee -- who is the real subject of the argument -- has been provided with service copies each time the argument has been presented. Thus far, he has failed to respond to the argument in any meaningful way. TIBS, which has been involved in the possible acquisition of the license for at least nine months or so (and likely more), has similarly failed to offer any substantive response at all

^{3/} Ordinarily, responses to SBH's petition would have been due on or before November 18, 1993 (*i.e.*, 10 days following the November 3 filing of the petition, plus three non-holiday days because SBH's petition was served by mail, *see* Sections 1.4 and 1.45 of the Commission's Rules).

(at least as far as the publicly available files at the Commission presently reflect).

10. Meanwhile, the public in Hartford continues to be deprived of television service on Channel 18, as it has been for almost three years already.

11. The failure of either the Trustee or TIBS to respond to SBH's arguments should not delay Commission action here. To the contrary, that failure reinforces the correctness of the result which SBH has been pressing for years: the Trustee's renewal application should be dismissed, the assignment application should be dismissed, and SBH's pending application should be granted immediately. Any other result would merely prolong the serious disservice which the public in Hartford has suffered for almost three years already, and would similarly (and unnecessarily) prolong the pendency of SBH's application, which was filed more than a decade ago, which was "cut-off" some three years ago, and which, as the only bona fide application for the Channel 18 facility, is obviously the only means of assuring reinstatement of service to Hartford on Channel 18 in the foreseeable future.^{4/} Of course, dismissal of the above-captioned applications would permit the simultaneous grant of

^{4/} The relief sought by SBH is completely consistent with, if not affirmatively mandated by, the Commission's own stated position with respect to such situations. In the Commission's own words,


When a licensee discontinues operations for a long period of time, the public is harmed through diminished service. This harm is compounded when the licensee is unable or unwilling to restore service and permanently discontinues operations but does not provide that information to the Commission so that the frequency might be used by another party. Allowing such licensees to preserve their exclusive right to use the frequency precludes the provision of service to the public by another interested party that would resume station operations. It also hinders the Commission's maximum utilization of the electromagnetic spectrum in the public interest.

The Commission has historically regarded as paramount its role under the Communications Act to ensure that licensees broadcast in the public interest. . . . Unjustified prolonged suspension of station operations disserves the public interest. . . .

SBH's application, an action which would serve the interests of the Hartford public (which would gain a new television service), SBH (which would finally receive the permit which it has diligently sought for more than ten years) and the Commission (which would rid itself of a longstanding and troublesome proceeding). The plainly unreasonable delay which has thus far characterized the Commission's inaction relative to these matters is inexcusable, and should be corrected immediately.

WHEREFORE, for the reasons stated, Shurberg Broadcasting of Hartford petitions for the dismissal of the above-captioned assignment application because of the parties' failure to prosecute that application. Additionally, SBH renews its previous requests that, in any event, both of the above-captioned applications be dismissed, and SBH's application be immediately granted.

Respectfully submitted,


/s/ Harry F. Cole
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January 13, 1994

CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of January, 1994, I caused copies of the foregoing "Further Petition to Dismiss Assignment Application and to Grant Competing Application" to be placed in the U.S. mail, first class postage prepaid, or hand delivered (as indicated below), addressed to the following:

Chairman Reed E. Hundt
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1919 M Street, N.W. - Room 814
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(BY HAND)

Commissioner James H. Quello
Federal Communications Commission
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Commissioner Andrew C. Barrett
Federal Communications Commission
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Commissioner Ervin S. Duggan
Federal Communications Commission
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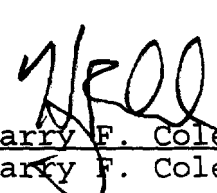
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/s/ Harry F. Cole
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